IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 181 OF 2002

Sharad Ganpat Shigavan..... ....Appellants.
V/s
(Orig.Accd. No.1)
The State of Maharashtra ....
Respondents.

Mr.C.K.Pendse, Adv. for the appellant.

Mr.V.B.Konde Deshmukh, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

7th Oct., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Ratnagiri in Sessions Case No.54 of 1999 on 22.01.2002 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution case stated briefly is that the deceased Sushilabai Joshi was residing in Markhandi Math area in Chiplun in a

rented room. She was a retired teacher. Her only daughter Vinda Joshi, the complainant in the present case, was and is residing at Chinchwad, Pune. It is the prosecution case that on 29.11.1998 Sushilabai informed her daughter that she would come to Pune immediately after receiving the cash of Rs.1,00,000/- advanced to one Shigavan. However Sushilabai did not go to Pune thereafter. It is further case of the prosecution that on 6.12.1998 the landlord of Sushilabai informed her daughter Vinda on phone that her mother had left her room in the evening of 5/12/1998 and did not return to the house. The daughter Vinda inquired with the relatives about her mother but she could not search her out. Thereafter immediately she left Pune and came to Chiplun in the morning of 7/12/1998. On 7/12/1998 Vinda lodged a missing report in the police station Chiplun. As per complaint of Vinda lodged on 11/12/1998 it is further case of the prosecution that on 8/12/1998 the accused Sharad Shigavan came to her and he showed her receipts showing payment of Rs.57,000/-to Sushilabai. The dates of payment were different, however the documents were not bearing any signatures. The accused again on the next day went to Vinda and he showed her receipt of payment of Rs.57,000/- which was even having the signature of Sushilabai. He also mentioned that Rs.30,000/- was paid to Sushilabai in presence of one lady named Ambekar.

4. Under a suspicion that Shigavan might have abducted her mother with an intention of murder, Vinda, the daughter of the deceased lodged a complaint on 11/12/1998 against Shigavan in Chiplun police station. The accused was arrested on 11.12.1998. On the same night he made a disclosure statement through which he told the police that he was ready to show the place where he had committed the murder of Sushilabai and where her dead body was thrown. Pursuant to the said disclosure dead body of Sushilabai was found near the village pimpli. The accused again volunteered on 14.12.1998 to show the place where the bag of deceased was thrown by him after committing the crime and then he took out some articles belonging to the deceased from mud in area known as `Saticha Pul' and handed over them to the police. It is the case of the prosecution that after reading the news about the crime in newspaper one goldsmith named Vesvikar voluntarily appeared in the police station and produced big bangles of the deceased which according to the prosecution were sold to him by the accused. A key was also recovered at the instance of accused No.1.

5. On the basis of this collected evidence the police filed charge sheet against accused No.1 Sharad Ganpat Shigavan and accused No.2-Suresh Sitaram Pawar. Both the accused pleaded not guilty and claimed to be tried. The prosecution in all examined seven witnesses

to prove its case and appellant-accused was convicted u/s.302, 201 of Indian Penal Code and accused No.2 was acquitted of all the charges which were leveled against him.

6. It is this order which as aforesaid is impugned in this appeal. P.W.1-Vinda Joshi is the daughter of the victim who has narrated the manner in which the death of her mother occurred. P.W.2-Shrikant Pawar is panch witness who acted as panch in relation to all the panchnamas executed by the police. He gives details of each panchnama and circumstances attending each panchnama. P.W.3-Ajij Nandgaonkar was asked by the accused to help the accused in selling certain gold articles. P.W.4-Rajendra Vesvikar is goldsmith who purchased the gold bangles (Patalya) from accused No.1 and on reading about death of the victim by possible suspicion of accused No.1 deposited the same with the police. P.w.5-Dwarkanath Bharat is the police inspector who registered the crime, arrested the accused as investigating officer. He then handed over the investigation to P.W.6-Vinayak Deshmukh who recorded further statement of the witnesses, panchnamas were executed and he proves all the panchnamas along with P.W.2-Shrikant. P.W.7 is Dr.Ashok Kulkarni who conducted the post mortem and has stated that because of the highly decomposed state of the body the exact cause of death cannot be ascertained.

7. The learned advocate appearing on behalf of the appellant-

accused submitted that P.W.2-Shrikant is liable to be disbelieved as he has acted consistently as pancha when other persons worked as panchas on different occasions could have been available for the prosecution. The very fact that the spot panchnama is used in all panchnamas creates reasonable doubt regarding truthfulness of the execution of the panchnama as narrated by panch witness. Even otherwise according to the learned counsel the statement made this witness regarding recovery of articles at the hands of accused are not liable to be accepted as there is no clear statement leading to the recovery. The second submission of the learned counsel was that the prosecution has failed to prove the offence directly and therefore the entire case is liable to be rejected. It is admitted position according to him that body was found late and in highly decomposed condition. The only evidence is the statement of P.W.2-Shrikant, panchnama of the description that the body was identified by son-in-law of the victim. Except this statement there is nothing to prove that the body found as per the recovery panchnama was that of the victim. The contention is that the prosecution having failed to prove identity of the dead body, connection of it to the accused that the panch witness being rejected nothing survives on record on the basis of which conviction can be recorded. These submissions were countered by the learned Additional Public Prosecutor who contended that the prosecution has

successfully prover every link to the chain of circumstances and therefore the order of conviction is liable to be upheld. We have to appreciate these rival contentions in the light of the evidence reappreciated by us. As we have already stated above we have reappreciated the evidence in its entirety. The prosecution through these seven witnesses has proved all the circumstances beyond reasonable doubt as will be seen from the following proved circumstances :

i) Giving of Rs.1,00,000/- by the deceased to the accused. This is proved by P.W.1;

ii) Delay in payment of the amount. This is proved by documents showed to the witness P.W.1 as disclosing payment made on different occasions;

iii) Telephone calls made by the victim to her daughter-P.W.1 that she would be receiving Rs.1,00,000/- from accused No.1 and will go to the daughter at Pune;

iv) Receipt of four calls of P.W.1 from the landline made to the victim her mother that the house is closed with lights on;

v) Visit of the daughter P.W.1 to the house finding it locked;

vi) Opening of the door in the presence of the police by breaking open the door;

vii) Massing report filed in police by the daughter P.W.1;

viii) Suspicion expressed by the daughter regarding involvement of accused No.1;

ix) Arrest of accused No.1;

x) Recovery of dead body at the instance of accused No.1;

xi) Recover of items belonging to the victim by the accused at the instance of the accused;

xii) Identification of the dead body as that of the victim by her son-in-law as proved by the panchas and P.W.2;

xiii) Recovery of gold bangles (Patalya) proved by P.W.4;

xiv) Identification of all articles belonging to deceased by P.W.1;

xv) Corroboration of these circumstances from the evidence of P.Ws.1, 2, 4, 5 and 6.

xvi) The evidence of the police officials is duly corroborated by independent witnesses;

xvii) All recoveries are proved both by police officer who made the same and by panch witnesses;

There is no discrepancy in the evidence of the panch witnesses and police officers. It will thus be seen that each link in the chain of circumstances is proved beyond reasonable doubt as will be seen from the foregoing discussion. It is relying on this that the order of conviction was recorded by the learned trial Judge. It is pertinent to note that because of mention of name of accused No.2 by some

different investigation that he was also prosecuted. But on scrutiny of the evidence it is obvious that there is no connection whatsoever of the accused No.2 with the crime and therefore the learned Judge properly appreciating the evidence acquitted the accused No.2. The conviction of accused No.1 as recorded by the trial Judge is thus based on sound principles of law and facts proved beyond reasonable doubt link by link through seven witnesses examined by the prosecution. We are in full agreement with the observations made by the learned Judge. His marshalling of facts is good, his conclusions are very good and therefore the result is such as cannot be interfered with. In the result therefore, the appeal fails and is dismissed.